IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 58 OF 2006

M/S KURTARKAR TRADERS THROUGH ITS PROPRIETOR SHRI PRASHANT S. KURTARKAR ....Petitioner

Versus

UNION OF INDIA THROUGH THE SECRETARY TO THE GOVT.OF INDIA DEPARTMENT OF AGRICULTURE AND 3 ORS., ...Respondents

Mr. Mahesh Amonkar, Advocate for the Petitioner.
Mr. C.A. Ferreira, Asst.Solicitor Gen. For R-1
Mr. A. Naik, Advocate for R.3 and 4.

Coram:- A. P. LAVANDE &
N. A. BRITTO, JJ.

Date:- 19th April, 2006

P.C.:

Heard Mr. Amonkar, the learned Counsel on behalf of the petitioner, Mr. Ferreira, the learned Counsel on behalf of Respondent No.1 and Mr. Naik, the learned Counsel on behalf of the Respondents No.3 and 4

2. The petitioner owes to the respondent No.3-Bank, a sum of over Rs.25,38,446/- . According to the petitioner, it is submitted that the petitioner is unable to make any statement as to the exact sum of money the petitioner is liable to pay to the Respondent No.3-Bank. The respondents No.3 and 4 have taken over the possession of the two shops of the petitioner. As regards one shop, the petitioner had executed an English Mortgage and as regards the other shop, an Equitable Mortgage. By virtue of letter dated 20.01.06 the petitioner informed the Respondent No.3-Bank that the petitioner would clear all the dues as on that date and in case he failed to pay the said sum that he had no objection to attach the

property liened to the Bank for sake of the recovery. It appears that pursuant to the said letter that the Bank took over the possession of the said two shops.

3. On behalf of the Respondent No.1 Shri Ferreira, the learned Assistant Solicitor General has placed reliance on the case of Orix Auto Finance (India) Ltd. v. Jagmander Singh and another (2006) 2 SCC 598 wherein the Apex Court has stated that in matters of contract unless the party succeeds in showing that the contract is unconscionable or opposed to public policy the scope of interference in writ petitions in such contractual matters is practically non-existent. The said case was in relation to vehicles financed by the financial companies. Nevertheless in the case at hand, if at all the respondent No.3-Bank has taken the possession of the said two shops, it is pursuant to the English and Equitable Mortgages executed by the petitioner in favour of the Respondent No.3-Bank and pursuant to the consent given by the petitioner as per the said letter dated 20.01.06. The petitioner has filed the petition even without producing the relevant documents including the said Mortgage deeds. There is no statement in the petition as to what extent is the liability of the petitioner towards Respondent No.3-Bank.

4. Shri Amonkar has submitted that unless the liability of the petitioner was determined in proper proceedings taken under the Multistate Cooperative Societies Act, 2002, there was no question of any of the assets of the petitioner being taken in possession of the Respondent No.3-Bank.

5. We are not inclined to accept the said submission. We have already set out the circumstances under which the said shops came to be taken over in possession by the Respondent No.3-Bank. The petition is also filed in a most casual manner. We are therefore not inclined to exercise extraordinary jurisdiction in favour of the petitioner.

The petition is therefore hereby dismissed in limine.

A. P. LAVANDE, J.

N. A. BRITTO, J.

sl.